Jurisdictional Statement

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No. _____

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

WILLARD A. MORRIS, STATE ADMINISTRATOR OF ELECTION LAWS, ET AL.,

Appellants,

v.

THOMAS P. MATHERS, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether the lower court disregarded *Storer v. Brown*, 415 U.S. 724 (1974), and *Mandel v. Bradley*, 432 U.S. 173 (1977), in demanding that a compelling state interest for state ballot access restrictions be convincingly shown before it would even assess whether and to what extent state law burdened protected rights?

2. Whether the lower court disregarded *Jenness v. Fortson*, 403 U.S. 431 (1970), and *American Party of Texas v. White*, 415 U.S. 767 (1974), in concluding that the mere existence of different statutory routes for independents and party candidates to a special election ballot gives rise to a burden on constitutional rights requiring compelling justification?

3. Whether any substantial burden on or discrimination against independent candidates is created by Maryland's uniform preprimary candidate filing deadline in a special congressional election and, if so, whether that burden is justified by the State's interest in ensuring a fair, speedy and efficient electoral system?

PARTIES

The parties to the proceeding in the court of appeals were Willard A. Morris, State Administrator of Election Laws, the State Administrative Board of Election Laws and its five members, Theodore N. Clark, James W. Johnson, Reginald A. Asplen, Karen Lancaster and Sylvia Raphael, as appellants/cross-appellees. Appellees/cross-appellants were Thomas P. Mathers, E. Christine Fishbeck and the Libertarian Party of Maryland.

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Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JURISDICTIONAL STATEMENT

Willard A. Morris, State Administrator of Election Laws, et al., pray that probable jurisdiction be noted to review the judgment entered in this case on May 6, 1981, by the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The per curiam opinion of the United States Court of Appeals for the Fourth Circuit is reported as *Mathers v. Morris*, 649 F.2d 280 (4th Cir. 1981), and is reprinted in the appendix to appellees' petition for certiorari which seeks review of the same decision. (*Mathers v. Morris*, No.

___, October Term, 1981). The opinion of the United States District Court for the District of Maryland *(Thomas P. Mathers, et al. v. Willard A. Morris, et al.*, Civil No. Y-81-622, ___ F. Supp. ___ (D. Md. Apr. 24, 1981)), adopted by the Court of Appeals, is not yet reported, but is also reprinted in the appendix to appellees' petition for certiorari.

JURISDICTION

On March 19, 1981, appellees filed suit in the United States District Court for the District of Maryland, alleging deprivation of their constitutional rights by operation of various provisions of Maryland's election laws and seeking a declaration of their unconstitutionality. Jurisdiction was alleged under Article I, § 2, Article I, §4, Article VI, and the First and Fourteenth Amendments of the Constitution of the United States, and upon 28 U.S.C. § 1331, §1343 (3) § 1343(4), § 2201; § 2202 and 42 U.S.C. § 1983. Appellees also moved for preliminary and permanent injunctive relief. In a memorandum opinion and order filed April 24, 1981, the district court rejected various contentions of appellees with respect to other provisions of state election law but held facially unconstitutional the deadline imposed by the annotated Code of Maryland (1976 & Cum. Supp. 1980), Article 33, § 4A-3 and § 7-1 (b) (3) for submitting signatures necessary to win a place on the ballot for a special congressional election. As a result, the court ordered state election officials to accept additional signatures gathered by appellees before April 7, 1981, which resulted in Mathers gaining ballot access. A judgment was entered by the court on April 27, 1981. The same day the State appealed to the United States Court of Appeals for the Fourth Circuit, which considered the case on an expedited basis and affirmed the decision of the district court on May 6, 1981. A notice of appeal to this Court of the May 6th judgment was filed on July 31, 1981

in the court of appeals. Jurisdiction is conferred on this Court by 28 U.S.C. § 1254(2).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Constitution of the United States

Amendment I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV, § 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Annotated Code of Maryland

Article 33, section 4A-3, section 7-1 and section 22-1 are reprinted in the appendix.

STATEMENT OF THE CASE

On October 31, 1980, Representative Gladys Noon Spellman suffered a cardiac arrest which left her in a semiconscious state. Although the voters of the Fifth Congressional District of Maryland (primarily Prince George's County) overwhelmingly reelected her to a fourth term on November 4, 1980, it later became increasingly clear, as her condition remained essentially unchanged,

that Representative Spellman would not be able to be sworn in when the 97th Congress convened. It did not take long for various persons to express an interest in filling the Spellman seat should it become vacant. For example, the Chairman of Maryland's Republican Party was quoted in December 1980 as stating that

> "generally speaking, people expect a special election to replace her to be held this spring. I would be shirking my responsibility if I did not prepare for the possibility of a vacant seat, of her resigning from that seat."

Shapiro, *GOP Eyeing Spellman's Seat,* Wash. Post, Dec. 8, 1980, at C1, C3 col. 5.

Finally, on February 20, 1981, Speaker of the House Thomas P. O'Neill announced that he would introduce a resolution the following week asking the House to declare the Spellman seat vacant. On February 24, the full House approved a resolution declaring the vacancy. Two days later, the Governor of Maryland, acting pursuant to the Annotated Code of Maryland, Article 33, § 22-1(b), issued a proclamation directing that a special primary election be held on April 7, 1981 and that a special election be scheduled for May 19, 1981.

Under the Annotated Code of Maryland, Article 33, § 4A-3, all candidates were required to file their certificate of candidacy no later than 21 days before the primary or, in this instance, March 16, 1981. Party candidates were, of course, required to campaign and prevail in a primary. Non-party or independent candidates were obliged to submit signatures totaling three percent of the registered voters eligible to vote for the office (5,436 signatures) by March 16th in order to win a place on the special election ballot. Article 33, § 7-1(b)(2) and (c)(3). There was no limitation as to when an independent candidate could begin gathering signatures. The signatures were required

to be validated by the local election board within seven days of their submission and delivered to the State Administrative Board of Election Laws. Article 33, § 7-1(j)(3). The state election laws placed no time limit on resolution of the inevitable administrative and legal challenges arising with respect to signature verification.

On March 6, 1981, the Libertarian Party of Maryland officially nominated Thomas P. Mathers as its candidate for the Fifth District seat, although it was apparent that the candidate had been circulating at least some nominating petitions well before that date.[1] At that time, the Libertarian Party was not a political party in the eyes of Maryland law because its candidates had failed to poll sufficient votes in the 1980 election to retain party status. Article 33, § 4C-1.[2] It was not until March 9, 1981 that a Mathers-for-Congress Campaign Committee, including a treasurer, was appointed by the candidate.

After unsuccessfully requesting the State Board on March 10, 1981, to ignore the requirements of § 4A-3 and § 7-1, the candidate, on March 16, 1981, filed 1,156

[1] Reproduced in the appendix (A. 10a) is a Mathers nominating petition as the Libertarian Party candidate for the Fifth District seat with an affidavit dated January 2, 1981.

[2] In 1980, the Libertarian Party submitted more than 10,000 signatures of qualified voters to achieve political party status under state law. Article 33, § 4B-1. The Party also fielded a presidential ticket headed by Edward Clark by gathering more than 141,000 signatures of which more than 56,000 were valid. In 1980, Party supporters gathered 11,765 signatures for Clark in Prince George's County, of which 7,970 were valid.

Because Clark polled only 14,192 votes, or .9 percent of the vote in the November 1980 election, the Libertarians lost their party status and were so advised on December 1, 1980. Nevertheless, in February 1981, the Libertarian Party chairman advised the State Administrator of Elections that the Party intended to submit 10,000 valid signatures to form a new party. The constitutionality of Maryland's provisions governing new parties was upheld by the lower court, but is the subject of a petition for certiorari filed by appellees.

signatures with the Prince George's County Board of Election Supervisors. Of the signatures submitted, only 908 were valid. This was far short of the 5,436 signatures needed. In anticipation of litigation, appellees gathered an additional 6,309 signatures. According to an affidavit filed by the Libertarian Party Chairman, the additional signatures were gathered within 10 days.

On March 19, 1981, Mathers, Christine Fishbeck, a voter desiring to vote for him, and the Libertarian Party of Maryland filed suit in the United States District Court for the District of Maryland to obtain for Mathers a place on the special election ballot as a candidate of the Libertarian Party and to maintain the Libertarians' status as a political party under Maryland law. In their complaint, they contended that the ballot access requirements for independent candidates in a special election imposed "unconstitutional burdens, not justified by any compelling interest, on the freedom of speech and the fundamental right to vote guaranteed by the First and Fourteenth Amendments." Appellees also alleged that these provisions created "an invidious, arbitrary and unjustified discrimination between political parties which nominate by primary election and those that do not."[3] They also

[3] Amplifying these contentions in a memorandum filed with the district court, appellees stated:

> "Plaintiffs do not contend that the required number of signatures necessary for nomination by petition three percent of the registered voters eligible to vote in the special election, standing alone, is unconstitutionally burdensome. Plaintiffs do not contend that the statutory deadline for filing certificates of candidacy is unconstitutionally burdensome.
>
> "Plaintiffs do contend, however, that the required number of signatures necessary for nomination by petition, in combination with the early deadline imposed for filing the total required number of signatures and the short time period available in which to gather signatures, impose an unconstitutional burden on the freedoms of speech and association for political purposes, protected by the First and Fourteenth Amendments to the Constitution, and the

complained that Maryland's candidate filing deadline reduced campaigning time, required substantial expenditures and diminished news coverage.[4]

The case was heard in the district court on an expedited basis on cross motions for summary judgment and a joint stipulation of facts.[5] On April 24, 1981, the court issued its opinion, which concluded that Mathers was constitutionally entitled to have his additional signatures counted and, if 5,436 were valid, he was entitled to access to the special election ballot. The starting point in the district court's analysis was its finding that state law treated party candidates and independents differently by requiring the latter to file petitions signed by not less than three percent of the registered voters at the same time as the certificate of candidacy. Slip Opinion at 4. "Those harsher restric-

fundamental right to vote, protected by the Fourteenth Amendment to the Constitution.

"Plaintiffs also contend that the State of Maryland's statutory requirement that candidates for nomination by petition submit both a certificate of candidacy and a petition containing the total required number of signatures by the same date that candidates for nomination by primary election need only submit a certificate of candidacy is invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution."

[4] An affidavit of the Libertarian Party Chairman attached to Mathers' motion for preliminary and permanent injunction also asserted certain difficulties in connection with the gathering of signatures on Mathers' behalf. This affidavit was not based on personal knowledge, was in obvious noncompliance with Rule 56(c) of the Federal Rules of Civil Procedure and was not relied upon in any way by the district court when it decided the case on summary judgment.

[5] Before the case was heard, the April 7 primary election was held. In that election, Steny H. Hoyer defeated 18 other candidates to win the Democratic primary. Audrey Scott defeated 11 other candidates to win the Republican primary. Hoyer spent nearly $115,000.00 to win in the primary; Scott spent more than $48,000.00.

tions, applicable only to dandidates who are not members of major political parties clearly result in a burden upon fundamental rights and implicate equal protection guarantees." *Id.* The court went on to apply the following test to determine the validity of these requirements: "[I]s the restriction necessary to serve a substantial state interest, and second, if so, is it burdensome on the right of an independent candidate to gain access to the ballot." Slip Opinion at 5. It concluded that it need only apply the first prong of this test because it determined the State had no compelling interest to justify the challenged statute. The court said that "[t]he only state interest which arguably supports the requirement that the total number of signatures be filed at the same time as the certificate of candidacy is the administrative interest in adequate time to verify petitions and print ballots" (Slip Opinion at 6); but held that "[s]ince the statute itself expressly contemplates that seven days will be adequate for the local boards to verify the signatures submitted," there was "no valid reason why the entire number of signatures should be required three weeks before the date of the special primary election." Slip Opinion at 6-7. Finding no compelling justification for the statutory scheme, the court said that "the deadline for filing the total number of signatures must be found constitutionally invalid." Slip Opinion at 7.

Absent from the district court's opinion was:

1. any suggestion that a factual analysis of the burden imposed by the ballot access restrictions should be the first step in the analysis;

2. any attempt to focus on when Mathers actually began his petition campaign, how his unsuccessful attempt to gather sufficient signatures comparesd with his successful effort conducted in a much shorter period; and whether his inability to obtain the necessary signatures in time was caused by his own lack of reasonable diligence;

3. any examination of the past experience of petition candidates for less than statewide office in Maryland in complying with the same requirements.[6]

4. any inquiry into the relationship between past and present Libertarian Party activity in Maryland and Prince George's County and the Mathers' petition drive;

5. any focus on the burdens of obtaining ballot access via the primary route;

6. any appreciation of the moderating features of the nomination by petition scheme, such as the unlimited period for gathering signatures;

7. any attempt to gauge proffered state interests for the challenged statutes in light of administrative and political realities; and

8. any conclusions drawn from factual findings or from anything but the bare language of the challenged statutes.

Following an expedited appeal, the United States Court of Appeal for the Fourth Circuit, on May 6, 1981, affirmed the decision of the district court and in a brief published *per curiam* opinion adopted the reasoning of the lower court. *Mathers v. Morris,* 649 F.2d 280 (4th Cir. 1981).[7]

[6] Unlike the situation for independent candidates for statewide office in Maryland, *see* Mandel v. Bradley, 432 U.S. 173, 178 n.4 (1977), petition candidates for less than statewide office, such as congressional candidates, have qualified for access to the general election ballot with great regularity. *See* Bradley v. Mandel, 449 F. Supp. 983, 988 (D. Md. 1978). In 1974, 8 of 10 independent candidates for less than statewide office were successful in qualifying. In 1976, 2 of 3. In 1978, 5 qualified. All of these candidates met the three percent requirement and filed their signatures at the same time primary candidates filed their certificates of candidacy.

[7] The appeal was argued and decided on May 6, 1981, and the court's mandate issued the same day.

On May 19, 1981, the special election was held. Hoyer polled 42,573 votes; Scott, 33,708; and Mathers, 960.

Appellants noted this appeal on July 31, 1981.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I.

THE LOWER COURT DISREGARDED THE TEACHINGS OF THIS COURT'S BALLOT ACCESS CASES TO INVALIDATE ON ITS FACE AND WITHOUT CONSIDERATION OF PAST EXPERIENCE, POLITICAL REALITIES OR THE SUBSTANTIALITY OF THE RESPECTIVE BURDENS ON PARTY AND NON-PARTY CANDIDATES, MARYLAND'S DEADLINE FOR SUBMITTING NECESSARY SIGNATURES TO OBTAIN ACCESS TO THE SPECIAL ELECTION BALLOT.

This Court has left no doubt that an independent candidate's filing deadline or signature gathering period, standing by itself, or in conjunction with other ballot access restrictions such as a percentage signature requirement, is not per se invalid. *Mandel v. Bradley*. 432 U.S. 173, 178 (1977); *Storer v. Brown*, 415 U.S. 724, 742-43 (1974). Rather the constitutionality of such provisions must be determined by a heavily factual, heavily practical analysis of their severity and of how well the State's asserted interest is served by the challenged provision. *Id.*

Under this test, only "excessively" or "severely" burdensome requirements and "substantial" restrictions call stringent constitutional examination into play. *Storer v. Brown*, 415 U.S. at 729, 738. It is only when, as a factual matter, the burden of the requirement reaches the "excessive" level that a compelling interest need be set forth to justify the alleged infringement on an independent's right to associate and the electorate's right to vote for the candidate. *Id.* at 729. *See also American Party of Texas v. White*, 415 U.S. 767, 781 (1974) ("If claiming an equal protection violation, the appellant's burden was to demon-

strate in the first instance a discrimination against them of some substance."); *Bullock v. Carter*, 405 U.S. 134, 143 (1972) ("[N]ot every limitation or incidental burden on the exercise of voting rights is subject to a stringent standard of review."); *Buckley v. Valeo*, 424 U.S. 1, 101 (1976); *McDonald v. Board of Elections*, 394 U.S. 802 (1969) (Application of rational basis test to Illinois absentee ballot statute).[8] In addition, even when the burden of the challenged provision is found to be substantial, the *Storer* test is a necessary component of the subsequent "compelling interest" analysis. *See* Developments in the Law-Elections, 88 Harv. L. Rev. 1111, 1142-43 (1975).

This Court has charged lower courts to inquire into the "nature, extent and likely impact" of the requirements, *Storer v. Brown*, 415 U.S. at 738, and to look to actual experience as an unerring guide of the extent of the burdens imposed by the statutory scheme. *Id.* at 742; *Jenness v. Fortson*, 403 U.S. 431, 439 (1970). This test is not an academic exercise, nor is it "self-executing," but rather is one which forces the factfinder to look to the political context of the State whose restrictions are drawn into question. *Storer v. Brown*, 415 U.S. at 730. The inquiry also looks to whether the "reasonably diligent independent candidate" can be expected to satisfy the requirements, not to those candidates who make no serious attempt to comply. *Id.* Finally, the Court has left no doubt about what would be the result of a sincere application of these principles to state ballot access laws: "It is very

[8] In Socialist Workers Party v. March Fong Eu, 591 F.2d 1252, 1261 n.5 (9th Cir. 1979), *cert. denied*, 441 U.S. 946 (1979), the court of appeals said that:

> As we read [Supreme Court] opinions, a statute must impose more than substantial burdens on constitutionally protected voting rights before a close scrutiny standard is required. . . . An insubstantial impingement on a "fundamental right" should be scrutinized no more closely than a substantial burden on a "not fundamental right."

unlikely that all or even a large portion of the state election laws would fail to pass muster under our cases." *Id.*

It is also settled in this Court that equality of treatment among those who choose to be major party candidates and those who choose an "alternate route" to the ballot as independent or minor party candidates is neither constitutionally required nor, in many cases, appropriate. *See, e.g., Storer v. Brown,* 415 U.S. at 730; *Jenness v. Fortson,* 403 U.S. at 441-442; *Williams v. Rhodes,* 393 U.S. 23, 30 (1968).

In *Jenness v. Fortson,* the Court focused on this very point. There, independent candidates argued that a state unconstitutionally discriminated against them by requiring them to obtain petition signatures of 5% of the eligible registered voters in order to obtain a place on the general election ballot while major party candidates were not required to collect any signatures but only to win the primary election in order to gain a place on the general election ballot. The Court rejected this argument, reasoning:

> [F]rom the point of view of one who aspires to elective public office in Georgia, *alternative routes are available to getting his name printed* on the ballot. He may enter the primary of a political party, or he may circulate nominating petitions either as an independent candidate or under the sponsorship of a political organization. We cannot see how Georgia has violated the Equal Protection Clause of the Fourteenth Amendment by *making available these two alternative* paths, neither *of which can be assumed to be inherently more burdensome than the other.*

Jenness v. Fortson, 403 U.S. at 440-41 (emphasis added). *See also American Party of Texas v. White,* 415 U.S. 767, 783 n.16 (1974) ("Texas has provided alternative routes to

the ballot . . . and it's problematical at best which is more onerous in fact.").

In this case, the lower court applied *none* of these principles. An impermissible burden was found solely on the basis of the existence of alternate statutory routes to the special election ballot. Rather than making its first inquiry a factual examination of the substance of the burdens allegedly created by Maryland's election laws, the court below proclaimed the factual analysis a secondary inquiry it was not obligated to undertake.[9] Thus, it did not consider Maryland's history of easy ballot access for independent candidates for less than statewide office or such pragmatic questions as when Mathers actually began his petition campaign — in January or in March; why the Libertarian Party waited two weeks to officially nominate Mathers; or why the candidate waited until a week before the deadline to appoint a campaign committee or treasurer.[10] Nor did the lower court weigh the other features of the State's ballot access laws, *see Mandel v. Bradley*, 432 U.S. at 178, to determine whether they

[9] The district court more fully expounded on its novel interpretation of the *Storer-Bradley* analysis in Anderson v. Morris, 500 F. Supp. 1095, 1099 (D. Md. 1980), *aff'd*, 636 F.2d 55 (4th Cir. 1980):

> While the extent of the burden must be balanced against the state interest involved at a later point in the analysis, this is not the initial inquiry. Having determined that fundamental rights are being burdened, the first question is whether there is a compelling state interest which might justify these burdens. In other words, *Storer* and *Mandel* do not relieve the state of the burden of showing some compelling state interest which may justify the restrictions. Only after the Court is satisfied that such a compelling interest exists will it reach the issue of how drastic the restrictions are — that is, could a reasonably diligent candidate comply?

[10] In contrast, some party candidates announced for the Spellman seat the same day the Speaker of the House said he would introduce a resolution on the question. Gettlin, *Spellman Must Vacate House Seat*, Wash. Star, Feb. 21, 1981, A-1.

moderate any burden created by the deadline. Finally, the decision below gives no hint why it is inherently more difficult to gather some 5,436 signatures than it is to spend $115,000.00 running against a dozen or more candidates in a primary.

Obviously, the determination of these factual questions and the resolution of factual disputes is not an obligation imposed on this Court. However, under this Court's ballot access decisions, it is the paramount duty of the district court.[11]

The decision below also failed to adopt the required pragmatic analysis in considering proffered compelling interests for the challenged provisions. The district court looked only at the language of the statute rather than actual practice to determine that efficient administration

[11] Nothing in Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1979), undercuts the continued vitality of the *Storer-Bradley* test for gauging the constitutionality of ballot access requirements. *Socialist Workers Party* did not involve lines drawn between independents and established party candidates, but between two classes of independents, those running for statewide office and those running for city offices. *Id.* at 181. The State did not even attempt to come forth with a rational basis to justify the more burdensome requirement for city candidates. *Id.* at 186. Finally, this Court's opinion cited both *Storer* and *Bradley*. *Id.* at 182, 184. As recently noted by the United States Court of Appeals for the Seventh Circuit, courts "are obliged to read the *Socialist Workers Party* opinion against the constitutional background of prior election cases." Bowe v. Board of Election Commissioners of City of Chicago, 614 F.2d 1147, 1151 (7th Cir. 1980). In rejecting a facial challenge to a minimum signature requirement, the court said that "most crucial . . . is the fact that the Supreme Court has consistently taken an intensely practical and fact-oriented approach to deciding these election cases." *Id.* at 1152. The court, which had affirmed the decision to strike down the statute in *Socialist Workers Party*, also said: "We view that case as being an exception to the more common fact-oriented approach in this area, an exception warranted by the extreme and incongruous operation of the statute in question." *Id.*

of the election laws could not justify the statute. Unlike the Court in *American Party of Texas v. White*, 415 U.S. at 787 n.15, it did not include in the period between the filing deadline and the primary necessary time for inevitable administrative and court challenges to the signature verification process. Nor did it realize that when the statutory scheme is viewed in this light, all candidates — primary victors and successful petition candidates — are known at the same time and have the same campaign period for the special election. Moreover, these values were not evaluated by the district court in the accelerated setting of a special election, where two votes are held in six weeks.

For all of these reasons, appellants contend that the decision below represents a clearly erroneous departure from the methodology and rationale of this Court's decisions and should not be allowed to stand.

II.

PLENARY REVIEW IN THIS CASE IS NECESSARY TO RESOLVE CONFLICTS AND DISPEL CONFUSION AMONG THE FEDERAL COURTS, TO OFFER GUIDANCE TO LOWER COURTS IN TIME FOR THE 1982 ELECTIONS, AND TO REDUCE THE PROSPECT OF EXPEDITED APPEALS IN ELECTION CASES TO THIS AND OTHER FEDERAL COURTS.

In *Storer v. Brown*, 415 U.S. at 730, this Court observed that "[i]t is very unlikely that all or even a large portion of the State election laws would fail to pass muster under our cases." However, this prediction has not come true, largely because of decisions of many federal courts in ballot access cases decided in 1976 and 1980. Like this case, such litigation falls into a familiar pattern. They are heard in an expedited fashion and decided on summary judgment on the basis of a skeletal stipulation. When appealed, they are usually the subject of an expedited proceeding on the eve of an election. Frequently, after the election, everyone

loses interest in the case and all that is left is bad precedent. If this Court does not grant plenary review in this case, it is likely that this scenario will be repeated in the 1982 elections. Numerous reasons suggest avoiding this result.

First, there is a genuine conflict among the circuits on the proper standards to be applied in ballot access cases. The Fourth Circuit, *Anderson v. Morris,* 636 F.2d 55 (4th Cir. 1980), and the Second Circuit, *Anderson v. Quinn,* 495 F. Supp. 730, 732-33 n.6 (D. Me. 1980), *aff'd,* ___ F.2d ___, No. 80-1551 (2d Cir. Aug. 11, 1980), will not apply the *Storer-Bradley* analysis to ballot access restrictions such as filing deadlines and will only focus on whether a compelling interest exists. The Seventh, Eighth and Tenth Circuits require the plaintiff to demonstrate the substantiality of the burden of a ballot access restriction before strict scrutiny is triggered. *See Bowe v. Bd. of Election Comm'rs of City of Chicago,* 614 F.2d 1147, 1152 (7th Cir. 1980); *McLean v. Meier,* 637 F.2d 1159, 1163 (8th Cir. 1980); *Socialist Workers Party v. March Fong Eu,* 591 F.2d 1252, 1260-61 (9th Cir. 1979).

Second, there is debate among federal courts as to the effect of this Court's decision in *Illinois State Board of Elections v. Socialist Workers Party,* 440 U.S. 173 (1979), on the continued applicability of *Storer v. Brown,* 415 U.S. 724 (1974). *Compare Bowe v. Bd. of Election Comm'rs of City of Chicago,* 614 F.2d at 1152, *with Anderson v. Quinn,* 495 F. Supp. at 732-33 n.6.[13]

This case offers an ideal vehicle to resolve these conflicts and dispel the confusion in time for the 1982 elections.

Finally, plenary review in this case may reduce appeals in ballot access cases. Parties that lose a case because the

[13] In the present case, the decisions below made no mention of the *Storer* test. Nor did they even cite Mandel v. Bradley, which arose from the Maryland district in the Fourth Circuit.

lower court has sincerely undertaken a factual analysis, albeit resolving those facts against them, are less likely to appeal than those who have been told that the court only wants to know what the State's compelling interest is and have seen their election statutes invalidated solely on their face. *See e.g., Bradley v. Mandel,* 449 F. Supp. 983 (D. Md. 1978), on remand from *Mandel v. Bradley.*[13]

CONCLUSION

In summary, appellants seek plenary review for reasons that transcend the facts and the parties. At stake is the integrity of this Court's ballot access decisions and the methodology to be employed by lower courts to resolve challenges to state election statutes. For this reasons, the State respectfully requests that probable jurisdiction be noted and that this Court vacate the judgment of the United States Court of Appeals for the Fourth Circuit and remand for application of the principles contained in this Court's decisions to the constitutionality of Maryland's signature filing deadline in special elections.

Respectfully submitted,

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August 4, 1981

[13] Plenary review in this case could avoid repetition of expedited petitions for certiorari such as those filed in Anderson v. Calibreeze, 499 F. Supp. 121 (S.D. Ohio 1980), *cert. denied* prior to decision in the Court of Appeals for the Sixth Circuit, 101 S. Ct. 41 (1980), where legal issues of similar importance were raised and resolution requested when this Court was in recess.

APPENDIX*

ANNOTATED CODE OF MARYLAND—ARTICLE 33

§ A-3. When filed.

Except for certificates of candidacy filed by write-in candidates and as otherwise provided herein, certificates of candidacy shall be received and filed in the office of the appropriate board not later than nine p.m. on the Monday which is ten weeks or seventy days before the day on which the primary election should be held under the primary election law. Certificates of candidacy for an office to be filled by a special election pursuant to § 22-1 (b) of this article, shall be received and filed in the office of the appropriate board not later than nine p.m. on the Monday which is three weeks or twenty-one days before the day on which the special primary election is to be held under the Governor's proclamation setting the date for the special primary election. If the filing date should occur on a legal holiday, the certificates must be received and filed not later than nine p.m. on the next regular business day which is not a legal holiday.

§ 7-1. General provisions.

(a) *Who may be nominated by petition.* — Except as otherwise provided for a candidate for a county board of education, a candidate for any public office who is registered as an independent or who is a member of or affiliated with a partisan organization which is not a political party as defined in this article or who is not a member of a political party whose nominees must be nominated by means of primary elections, may be nominated by petition, as in this section provided.

* By agreement of the parties, the opinion, order and judgment of the District Court, as well as the opinion of the U.S. Court of Appeals for the Fourth Circuit, appear in the appendix to the petition for certiorari; filed by Appellees in *Mather v. Morris*, No. ____, October Term, 1981.

(b) *Filing certificate of candidacy; petitions required to be filed.* — (1) A candidate for public office seeking nomination by petition shall file a certificate of candidacy at the time and place and in the manner provided in Subtitle 4A of this article and shall comply with all other applicable provisions of the subtitle, in the same manner as candidates for nomination at a primary election.

(2) In order to have the name of a proposed candidate placed on the ballot under this section, the candidate shall file with the appropriate board petitions signed by not less than 3 percent of the registered voters who are eligible to vote for the office for which the nomination by petition is sought. Petitions shall be filed as required by subsection (c) of this section.

(3) For purposes of this subsection, the number of registered voters shall be determined as of the commencement of the 4-month period before the primary election for which the nomination is sought.

(c) *Time of filing petitions.* — (1) A portion of a petition that contains at least one-third of the required total number of signatures of eligible registered voters shall be filed with the appropriate board at the time of the filing of the candidate's certificate of candidacy.

(2) The remainder of the petition that contains the balance of the required number of signatures shall be filed with the appropriate board by not later than 5 p.m. on the first Monday in August in the year in which the general election is to be held.

(3) In the case of a candidate for an office to be filed pursuant to § 22-1 (b) of this article, a petition that contains the total required number of signatures shall be filed with the appropriate board at the time required for the filing of a certificate of candidacy for the office.

(d) *Form of petition; affidavit.* — The State Administrative Board of Election Laws shall prescribe the

form of petitions filed under this section. The signatures required under subsection (c) of this section shall be on separate papers, bearing one or more signatures and being no more than 8½ inches in width or 14 inches in length. Such paper shall not contain the names of persons residing in more than one county or in any county and in the City of Baltimore. Each signer shall append to his signature his residence, and the name of the county or city where he is registered as a voter, and immediately below the signature of any signer there shall be either printed or typed the name of the signer. Every paper shall be accompanied by an affidavit or affidavits signed under penalty of perjury, to the effect that the signers are, to the best knowledge and belief of the affiant or affiants, registered voters of the county or city as set forth in the petition, and that the affiant or affiants personally saw the signers, in regard to whom he or they make oaths, sign the paper.

(e) *Restrictions on signers.* — A person may not sign more than once for the same nominee for an office.

(f) *Submission of papers to county board.* — Any paper which is to form a part of a petition filed pursuant to subsection (c) of this section shall be submitted to the board for the county or the City of Baltimore in which the signers on the paper are alleged to reside. The board shall give to anyone submitting any such paper a signed receipt stating that the paper is on file with the board.

(g) *Verification of signatures.* — (1) The board shall verify all legitimate signatures of persons who are registered voters and who have signed a petition pursuant to subsection (c) (1) of this section. The local board or State Board, as the case may be, immediately on completion of the verification process, shall notify the candidate of the number of signatures verified so that the candidate may file the proper balance of signatures as required by subsection (c) (2) of this section.

(2) For an office to be filled by the voters of the entire State or of any subdivision of a greater extent

than one county, the board shall verify all legitimate signatures of persons who are registered and who have signed any petition filed pursuant to subsection (c) (2) of this section.

(3) For an office to be filled by the voters of one county or the City of Baltimore, the board shall verify any legitimate signatures of persons who are registered to vote and who have signed any petition filed pursuant to subsection (c) (2) of this section, up to a number equal to 110 percent of the total number of signatures required by subsection (b) (2) of this section for nomination to the office sought. The board may verify additional signatures as it considers advisable.

(h) *Effect of question concerning signature's validity.* — On any petition, including an associated or included set of petitions, submitted to the board, any question concerning the invalidity of the signature of any person on the petition affects that signature only and does not affect or impair any other portion of the petition or petitions.

(i) *Endorsement.* — Following the verification, a duly authorized employee of the board shall endorse on each paper the number of signatures verified by the employee of the board shall endorse on each paper the number of signatures verified by the employee and shall endorse and sign the paper. For the purpose of the endorsement, each paper shall contain a blank space for the endorsement.

(j) *Delivery to State Administrative Board of Election Laws.* — All papers delivered to a board pursuant to subsection (c) (1) of this section and required to be filed with the State Administrative Board of Election Laws pursuant to § 4A-2 of this article, after verification and endorsement as required, shall be mailed or delivered by the board to the State Administrative Board of Election Laws within 3 weeks or 21 days after the deadline for the filing of the certificate of candidacy.

(2) All papers delivered to a board pursuant to subsection (c) (2) of this section and required to be filed with the State Administrative Board of Election Laws pursuant to § 4A-2 of this article, after verification and endorsement as required, shall be mailed or delivered to the State Administrative Board of Election Laws within 3 weeks or 21 days after the deadline for receipt of the papers by the board pursuant to subsection (c) (2) of this section.

(3) All papers delivered to a board pursuant to subsection (c) (3) of this section, after verification and endorsement, shall be mailed or delivered to the State Administrative Board of Election Laws on or before the Monday that is 2 weeks or 14 days before the day on which the special primary election is to be held under the proclamation of the Governor.

(4) All papers delivered to the board pursuant to subsection (c) (1) and (2) of this section that are not required to be filed with the State Administrative Board of Election Laws pursuant to § 4A-2 of this title, on behalf of a candidate who is not required to file with the State Board a certificate of candidacy shall be verified and endorsed in the manner and at the time required by his section. The State Board shall be notified by the boards of the results of the verification.

(k) *Determination of sufficiency of signers.* — The State Administrative Board of Election Laws shall determine the sufficiency of the percentage of registered voters signing petitions in those cases in which candidates file certificates of nomination or of candidacy in its office. In all other instances, the determination shall be made by the local boards.

(l) *Petition lacking required number of signatures.* — If the required number of signatures is not properly appended to a petition required to be filed by subsection (c) of this section, it shall be declared insufficient, and the name of the proposed candidate may not be placed on the ballot.

(m) *Application to county board of education election.* — The provisions of this section for the form of a petition, verification and endorsement of signatures on it, notification to the State Administrative Board of Election Laws of the results, and determination of the sufficiency of the petition apply to petitions of candidates for a county board of education. (1957, ch. 739, § 1;

§ 22-1. General provisions.

(a) *Date of election.* — Elections of Representatives of this State in the Congress of the United States shall be held on the Tuesday next after the first Monday in the month of November every two years commencing in the year 1966, and taking place every second year thereafter.

(b) *Vacancies.* — If a vacancy in the office of Representative in Congress should occur by death, resignation or otherwise, the Governor shall, except as hereinafter provided, issue a proclamation directing that a special primary election and a special election be held to fill the vacancy. He shall issue this proclamation within ten days after the vacancy occurs or becomes known to him.

(1) The Governor's proclamation shall specify the date for the special primary and special elections, provided that the special primary election shall be held on any Tuesday which is at least more than thirty-five days from the date of the proclamation and that the special election shall be held on any Tuesday which is at least more than thirty-five days from the date of the special primary election.

(2) (2) Nominations of candidates shall be as specified in § 4-1 of this article.

(3) Except as otherwise specifically provided in this article and except where such construction would be unreasonable, the provisions of this article applicable to primary elections shall be applicable to the special primary election provided for herein and the provisions of this article applicable to general elections

shall be applicable to the special election provided for herein.

(4) Immediately after issuing the proclamation, the Governor shall give public notice of the proclamation and shall deliver it to the State Administrator of Election Laws. The State Administrator of Election Laws, immediately after receiving the proclamation, shall notify the boards of the counties comprising the congressional district in which the vacancy exists of the proclamation and shall forward a copy of the proclamation to each of the boards.

(5) Notwithstanding the provisions of this section, if a vacancy in the office of Representative in Congress occurs during the period beginning with sixty days before any regularly scheduled statewide primary election and ending at noon on the following third day of January, the Governor if he deems it in the best interests of the State may in his discretion decline to issue the proclamation provided for herein and may allow the office to remain vacant until it is filled pursuant to the regular election process.

NOTICE OF APPEAL
(Filed July 31, 1981)

In The
United States Court of Appeals
For The Fourth Circuit

No. 81-1393

Thomas P. Mathers, et al.,
Appellees,

v.

Willard A. Morris,
State Administrator of Election Laws, et al.,
Appellants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Pursuant to Rule 10 of the Rules of the Supreme Court of the United States, notice is hereby given that Willard A. Morris, State Administrator of Election Laws, Theodore N. Clark, Chairman of the State Administrative Board of Election Laws, James W. Johnson, Vice-Chairman of the Board, Reginald A. Asplen, Karen Lancaster, and Sylvia Raphael, members of the Board, and State Administrative Board of Election Laws, the appellants in the above captioned action, hereby appeal to the Supreme Court of the United States from the final judgment of the United States Court of Appeals for the Fourth Circuit dated May 6, 1981, affirming the judgment of the United States District Court for the District of Maryland, dated April 28, 1981.

This appeal is taken pursuant to 28 U.S.C. § 1254 (2).

STEPHEN H. SACHS,
Attorney General of Maryland,

DIANA G. MOTZ,
ASSISTANT ATTORNEY GENERAL,

ROBERT A. ZARNOCH,

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PROOF OF SERVICE

I, Robert A. Zarnoch, Assistant Attorney General, one of the attorneys for Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the thirty-first day of July, 1981, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the Appellees by mailing copies in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of record as follows: Robert J. Booze, Esquire, 22 West Jefferson Street, Rockville, Maryland 20850, and Stuart R. Blatt, Esquire, Suite 1623, World Trade Center, Baltimore, Maryland 21202. All parties required to be served have been served.

ROBERT A. ZARNOCH,
Assistant Attorney General.

10a

NOMINATION BY PETITION

900363

TO THE BOARD OF SUPERVISORS OF ELECTIONS:

WE, THE UNDERSIGNED, VOTERS OF Prince Georges COUNTY,
HEREBY CERTIFY THAT WE DO NOMINATE:

NAME TOM MATHERS ADDRESS 5626 RUATAN STREET BERWYN HEIGHTS, MARYLAND 20740 UNITED STATES

PARTY AFFILIATION LIBERTARIAN FOR THE OFFICE OF REPRESENTATIVE DISTRICT FIFTH

Signature Roland C Ashley Print Name Roland C Ashley Home Address 1418 Farmingdale Ave Town Seat Pleasant Zip 20027	Signature Janet L Hantman Print Name Janet L Hantman Home Address 4102 5th St Town Mt. Rainier MD Zip 20822
Signature Maynard W Layne Print Name MAYNARD W. LAYNE Home Address 6811 LAMONT DR Town LANHAM MD Zip 20801	Signature Darlene C Kidd Print Name Darlene C Kidd Home Address 7503 Carters Lane Town Riverdale MD Zip 20840
Signature John D. Spriggs Print Name John D Spriggs Home Address 1322 Alberta Dr. Town Forestville, Md Zip 20028	Signature Patrick McKeever Print Name Patrick McKeever Home Address 3716 Tulane Dr. Town Hyattsville, Md Zip 20783
Signature Robert P. Bahan Print Name ROBERT P. BAHAN Home Address 4001 Oglethorpe Rd. Town Hyattsville Zip 20781	Signature Kenneth F. Klenk Print Name Kenneth F. Klenk Home Address 6243 Springhill Ct #102 Town Greenbelt, Md Zip 20770
Signature William A. Cooley III Print Name William A. Cooley III Home Address 2903 Norfolk Ave Town Oxon Hill, MD Zip 20745	Signature Robert Mayhew Print Name ROBERT MAYHEW Home Address 2922 BARRISTER LN. Town Bowie Zip 20715
Signature Paulette Poole Print Name Paulette Poole Home Address 9219 Rhode Is. Ave. Town Mt. Rainier, Md. Zip 20822	Signature Randall Bruhk Print Name RANDALL BRUHK Home Address 11420 Old Prospect Hill Road Town Glenn Dale, Md Zip 20769

AFFIDAVIT

I, Iqbal A. Ahmad, UNDER PENALTY OF PERJURY, DO SOLEMNLY SWEAR (OR AFFIRM) TO MY BEST KNOWLEDGE AND BELIEF, THAT, ON THIS PETITION, (1) THE SIGNATURES ARE GENUINE AND BONA FIDE, (2) THE SIGNERS ARE REGISTERED VOTERS OF THE COUNTY OR CITY AS SET FORTH IN THE PETITION, AND, (3) THAT I PERSONALLY SAW THE SIGNERS SIGN THE PETITION.

PRINT NAME

Signature Iqbal A Ahmad Date 1-2-91

Address 9707 Capehart Ln, Hill Telephone 951-0539

Signed in Bethesda, Maryland
(Town or City)

DO NOT WRITE IN THIS SPACE	
Total Number of Signatures	11
Number Invalidated	1
Total Valid Signatures	10
By	

7

Motion to Dismiss or Affirm

81-240

No. _____

Office-Supreme Court, U.S.
FILED
SEP 3 1981
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

WILLARD A. MORRIS, STATE ADMINISTRATOR OF ELECTION LAWS, ET AL.,

Appellants,

v.

THOMAS P. MATHERS, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MOTION TO AFFIRM

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September 3, 1981

IN THE UNITED STATES SUPREME COURT

WILLARD A. MORRIS, et al.,

Appellants,

v.

THOMAS P. MATHERS, et al.,

Appellees.

MOTION TO AFFIRM

QUESTIONS PRESENTED

I. WHETHER THE DISTRICT COURT CORRECTLY APPLIED THE CONSTITUTIONAL STANDARDS ANNOUNCED IN STORER v. BROWN AND MANDEL v. BRADLEY IN FINDING THE REQUIRED NUMBER OF SIGNATURES NECESSARY FOR NOMINATION BY PETITION IN MARYLAND, IN COMBINATION WITH THE EARLY DEADLINE IMPOSED FOR FILING THE TOTAL REQUIRED NUMBER OF SIGNATURES AND THE SHORT TIME PERIOD AVAILABLE IN WHICH TO GATHER SIGNATURES, WAS UNCONSTITUTIONAL AS APPLIED TO APPELLEES.

II. WHETHER THE COURT OF APPEALS CORRECTLY APPLIED THE CONSTITUTIONAL STANDARDS ANNOUNCED IN STORER v. BROWN AND MANDEL v. BRADLEY IN AFFIRMING THE DECISION OF THE DISTRICT COURT.

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ARGUMENT

I. THE DISTRICT COURT CORRECTLY APPLIED THE CONSTITUTIONAL STANDARDS ANNOUNCED IN STORER v. BROWN AND MANDEL v. BRADLEY IN FINDING THE REQUIRED NUMBER OF SIGNATURES NECESSARY FOR NOMINATION BY PETITION IN MARYLAND, IN COMBINATION WITH THE EARLY DEADLINE IMPOSED FOR FILING THE TOTAL REQUIRED NUMBER OF SIGNATURES AND THE SHORT TIME PERIOD AVAILABLE IN WHICH TO GATHER SIGNATURES, UNCONSTITUTIONAL AS APPLIED TO THE APPELLEES.

In their Jurisdictional Statement, the Appellants assert that the United States District Court for the District of Maryland disregarded the teachings of Storer v. Brown, 415 U.S 724 (1974), and Mandel v. Bradley, 432 U.S. 173 (1977), by failing to consider past experience, political realities or the substantiality of the respective burdens on party and non-party candidates. Jurisdictional Statement, Morris v. Mathers, No. 81- (U.S.) at 10. In an earlier challenge to

the constitutionality of Maryland's election laws, the Supreme Court tailored the appropriate inquiry:

> "<I>n the context of <Maryland> politics, could a reasonably diligent independent candidate be expected to satisfy the <ballot access> requirements, or will it be only rarely that the unaffiliated candidate will succeed in getting on the ballot? Past experience will be a helpful, if not always an unerring, guide: it will be one thing if independent candidates have qualified with some regularity and quite a different matter if they have not. . . ."

Mandel v. Bradley, 432 U.S. at 177.

Unlike the situation presented in Storer, all of the critical facts necessary to apply this constitutional standard were available to the District Court from the evidentiary record which included a Stipulation of Facts and numerous Affadavits. See Storer v. Brown, 415 U.S. at 738. Because this special election was the first to be held under the

present Maryland statutory scheme, past experience proved no guide. It is clear, however, from the detailed analysis of the statutory scheme by the District Court that it realistically assessed whether the law imposed excessively burdensome requirements on a reasonably diligent candidate attempting to qualify for ballot position.

Indeed the restrained approach of the District Court in carefully tailoring its Judgment to provide for ballot position only after Mr. Mathers had demonstrated a significant modicum of support within a reasonable time indicates that Mr. Mathers would have to first show that he was, indeed, a reasonably diligent candidate before gaining ballot position. Judgment, Mathers v. Morris, Civil No. 81-622 (D.Md. April 28, 1981) at 2. Three other independent or minority party

candidates announced their candidacies for the same special election and none of the three even attempted to meet the onerous ballot access requirements imposed by Maryland law. The State of Maryland is grasping at straws when it suggests that its statutory scheme can only be found excessively burdensome after it has successfully deprived some candidates and their supporters of their constitutional rights.

II. THE FOURTH CIRCUIT CORRECTLY APPLIED THE CONSTITUTIONAL STANDARDS ANNOUNCED IN STORER v. BROWN AND MANDEL v. BRADLEY IN AFFIRMING THE DECISION OF THE DISTRICT COURT.

In their Jurisdictional Statement, the Appellants incorrectly assert that the Fourth Circuit will not apply the Storer-Bradley analysis in ballot access cases. Jurisdictional Statement, Morris v. Mathers, at 16. In fact, the United

States Court of Appeals for the Fourth Circuit affirmed the instant case on the Memorandum Opinion and Order of the District Court. Mathers v. Morris, No. 81-1363 and 81-1393 (4th Cir. May 6, 1981) at 4. The District Court, in its Memorandum Opinion and Order, expressly found "harsher restrictions, applicable only to candidates who are not members of major political parties,. . . ." Memorandum Opinion and Order, Mathers v. Morris, Civil No. 81-622 (D.Md. April 24, 1981) at 4. It was only after this specific finding that the District Court began its equal protection analysis. Id. at 4. Thus, the Appellants' argument that "there is a genuine conflict among the circuits on the proper standards to be applied in ballot access cases," Jurisdictional Statement, Morris v. Mathers, at 16, is grounded on the false premise

that the District Court did not apply the Storer-Bradley analysis. There is indeed conflict among the circuits, but not on this issue. Instead the conflict is the appropriate test to be used once harsher restrictions on independent and minority party candidates are found. See Petition for Writ of Certiorari, Mathers v. Morris, No. 81-232.

Second, the Appellants argue "there is debate among the federal courts as to the effect of this Court's decision in Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1979), on the continued applicability of Storer v. Brown, 415 U.S. 724 (1974)." The Appellees have never argued that Storer is a dead letter. In fact, the Appellees, the District Court and the Fourth Circuit have all consistently relied on Storer. See, e.g., Memorandum

in Support of Motion for Preliminary Injunction, Mathers v. Morris, Civil No. 81-622 (D.Md. April 24, 1981) at 6; Memorandum Opinion and Order, Mathers v. Morris, Civil No. 81-622 (D.Md. April 24, 1981) at 5; and Mathers v. Morris, No. 81-1363 and 81-1393 (4th Cir. May 6, 1981). The Appellants are tilting at windmills by suggesting that the Supreme Court needs to reaffirm the doctrine of Storer. Moreover, even assuming that the teachings of Storer v. Brown were in question, the Appellants have hardly shown that this is an appropriate case to resolve the issue. The vitality of Storer has never been contested between the parties in the instant case.

Finally, it is hardly surprising that the State of Maryland seeks to be relieved of the duty to demonstrate some compelling state interest for the re-

pressive election statutes that it seeks repeatedly to enforce and which are continually being struck down as unconstitutional. See, e.g., Bradley v. Mandel, 449 F.Supp. 983 (D.Md. 1978), on remand, Mandel v. Bradley, supra; Anderson v. Morris, 500 F.Supp. 1095 (D.Md. 1980), aff'd, 636 F.2d 55 (4th Cir.). The plain truth is that if reasonably diligent independent and minority party candidates and their supporters could comply with Maryland's statutory scheme to achieve ballot position, without the expense and uncertainty of litigation, there would be little incentive to attack their validity. The political reality is that such candidates and their supporters would be just as happy to keep frivolous candidates off the ballot as would the major parties.

CONCLUSION

In summary, there is little merit to the State of Maryland's attempt to hide behind the skirts of dicta that "It is very unlikely that all or even a large portion of the state election laws would fail to pass muster under our cases; . . . ." Storer v. Brown, supra, at 730. The affadavits submitted to the District Court make clear that of the states in the Union, the "Free State" has the most repressive statutory electoral scheme of them all. For these reasons, the Appellees respectfully request that this Honorable Court affirm the judgment of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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